THE HON'BLE MR JUSTICE K.C. BHANU

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WRIT PETITION NO : 25148 of 2003

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24-08-2005

Between:

1. Anjuman_e-Islamia rep by its Joint Secretary
   M.Azamatullah Khan, S/o Haleem Khan R/o Kurnool
   Kurnool District and another.

..... PETITIONERS

AND

1 The State of AP rep by its Principal Secretary Higher Education

Department, Secretariat Hyderabad and another.

.....RESPONDENTS

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 25148 of 2003

O R D E R:

This writ petition is filed under Article 226 of the Constitution of India, seeking a Mandamus declaring the action of the respondents in not according permission for filling up the vacant posts, which were already included in the grant-in-aid and having received a detailed report from the Regional Joint Director, Cuddapah as illegal and arbitrary.

In the affidavit filed in support of the writ petition it is stated that the petitioners are the minority institutions represented by one M.Azmatullah who is the Joint Secretary and Correspondent of the colleges respectively. As per the norms fixed by the University as well as the State and as per the last permission granted by the 2nd respondent in L.Dis.No.2519/PC.II-4/90dated 15-11-1996 the petitioners institutions decided to recruit the staff including the vacancies fallen vacant on account of the retirement of aided staff on attaining the age of superannuation. In view of the fact that the Management of the petitioners' colleges proposed to obtain permission to fill up the posts, under the instructions of the 2nd respondent-Commissioner and Director of Higher Education, the Regional Joint Director of Collegiate Education, Cuddapah conducted inspection but till to-day having

received the full particulars, the respondents authorities failed to accord permission to fill up the vacancies. Therefore, the action of the respondents authorities in not according permission for filling up the recognized posts included in the grant-in-aid scheme and the institutions being accepted as a minority institution is clearly in violation of Article 30(1) of the Constitution of India. Aggrieved by the same, the present writ petition has been filed.

Counter affidavit has been filed by the respondents.

Heard both sides.

Learned counsel for the petitioners-college contended that the stand taken by the Government expressing the lame excuse stating that permission could not be accorded to the management of the petitioners' college due to the ban orders imposed on 12-12-1999, on filling up the vacant posts in private aided colleges in the State, is not sustainable in view of the fact that the Government accorded permission subsequent to the above ban orders to various colleges for filling up the posts. Therefore, it can be said that the Government is adopting pick and choose method in granting permission to some of the colleges. The learned counsel placed strong reliance on the proceedings dated 29-12-1999 issued by the Commissioner and Director of Collegiate Education, Hyderabad, wherein permission was accorded to fill up certain posts. Therefore, the action of the respondent- authorities in not according permission to the petitioners' colleges is wholly unsustainable.

On the other hand, the learned Government pleader for Higher Education appearing for the respondents contended that since there is a ban in filling up the posts in Private Aided Junior Colleges, Government could not accord permission to the petitioners' college. The Government has constituted a Committee in G.O.Ms.No.90 Education, dated 10-03-1989 under the Chairmanship of the Chairman, A.P. State Council of Higher Education. The 2nd respondent has submitted proposals for according permission to fill up the vacant posts in Private Aided Colleges, to the Government for their due consideration. After rationalization of filling up the posts, report is sought for from the A.P. State Counsel for Higher education. Since the said report is received, the Government will take an appropriate decision in this regard.

I have perused the entire material on record.

Since all the posts in the petitioners' college are aided posts, permission from the competent authority is required to be taken before filling up of the said posts. The reason for not giving permission to the petitioners' colleges, which are minority institutions is that there

is a ban in filling up the posts in respect of the grant-in-aid posts and therefore, permission could not be given to the petitioners' college. As submitted by the learned Government Pleader appearing for the respondents an appropriate decision has to be taken by the Commissioner of Collegiate Education on the recommendations of the A.P. State Counsel for Higher Education.

The learned Government Pleader appearing for the respondents made available a copy of the proceedings in Memo No.449/IE.II.1/2005-3, dated 23-07-2005 for consideration. For better appreciation the relevant portion of the letter is extracted hereunder:

> "The attention of the Commissioner of Intermediate Education is invited to the references cited and he is informed that as per the present Government Policy there shall be no filling up of aided posts by the government. Therefore, if anybody has been promoted against such posts by the management they shall be treated as "un-aided".

In the counter affidavit filed by the respondents it is categorically stated that the petitioners' college has submitted proposals for according permission to fill up the vacant posts. However, permission was not accorded to them due to the ban orders on filling up of the vacant posts in Private Aided colleges in the state.

The non-granting of permission to fill up the aided posts cannot be said to be arbitrary and illegal because of the earlier decision taken by the Government not to fill up the aided-posts.

The proceedings in Rc.No.3348/PC.II-2/99 dated 29-12-1999 as relied on by the learned Government Pleader appearing for the respondents would indicate the absorption of the persons as against the aided vacant posts. Therefore, the process of regular selection so also the proceedings dated 29-12-1999 do not indicate that permission was given by the respondents to fill up the aided vacancies. Therefore, the proceedings have no application to the present case.

The main reason for not according permission to the petitioners' college is only due to the ban on filling up of the vacant posts in private aided colleges in the State. Since the ban orders on filling up of the Aided vacant posts in private aided colleges including the petitioners' college in the State are general in nature, no step motherly attitude is adopted towards the petitioners' college in not according permission to their college. Therefore, citing the Constitutional Provision under Act 30(1) of the Constitution of India is unsustainable.

Having regard to the facts and circumstances of the case and in view of the fact that till the ban is lifted, after arriving at the rationalisation of the staffing pattern and in the light of the submission by the learned Government Pleader that the Government will take an early decision in this regard, interim orders granted by this court is vacated.

Accordingly, the writ petition is dismissed. However, this order will not preclude the respondents from granting permission to the petitioners' colleges at an appropriate time when the ban is lifted or the proceedings received from the A.P. State Counsel for Higher Education. No costs.

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24-08-2005

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